

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**FRESHUB, INC., FRESHUB, LTD.,**  
*Plaintiffs*

**-vs-**

**AMAZON.COM INC., PRIME NOW,  
LLC, WHOLE FOODS MARKET INC.,  
WHOLE FOODS MARKET SERVICES,  
INC., AMAZON.COM SERVICES LLC,**  
*Defendants*

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**6-21-CV-00511-ADA**

**NOTICE OF TRIAL PROCEDURES**

In anticipation of trial starting on June 14, 2021, the Court notifies the parties of the following trial procedures, which the Court employs to maximize safety and social distancing during trial:

- Jury Selection will begin at 9:00 am, June 10, 2021 in the United States District Court, 800 Franklin, Waco, Texas 76701.
- In its jury summons, the Court informed prospective jurors that (1) jury selection will be conducted in the district courtroom, which is large enough to accommodate this jury panel with recommended social distancing; (2) if selected, jurors will be distanced more than six feet apart at all times; (3) all rooms will be cleaned and disinfected before their arrival, and hand sanitizer will be available; (4) bathroom breaks will be lengthened to ensure physical distancing; and (5) no one should report for duty if they feel ill, have any flu-like symptoms, are experiencing shortness of breath, have a fever, are coughing or sneezing, have been asked to self-quarantine by any hospital or health agency, or have had close contact with anyone who has been diagnosed with COVID-19. The Court has excused jurors who sought to be excused based on COVID-19-related concerns.
- Before entering the building, the Court expects to take panel members' temperatures, and anyone with a fever will be excused from service.
- The Court will provide the parties an opportunity to do a general and individual voir dire at the Court's discretion. The Court will provide the parties with a diagram of the room that identifies the jurors and their seat assignments.

- If necessary, the Court, counsel, and the court reporter may step out of the room to conduct any bench conferences and resolve any motions to strike.
- After seven jurors are selected, the Court will dismiss the remaining panel members from service in this case.
- To eliminate the need to leave the building to eat lunch, the Court will enter a jury-sequestration order and will provide the jurors' lunch. The jurors will be able to maintain social distancing during lunch.
- The parties shall jointly provide notebooks to the jurors on the first day of trial before the trial starts. The notebooks shall be provided to a Court staff, who will deliver the notebooks to the jurors.
- During trial, the jurors will sit in the jury box at least six feet from one another. The parties will sit facing the gallery. Witnesses will testify from the witness stand enclosed in a plexiglass barrier. Face covering is optional for all individuals in the courtroom during trial.
- Although seating will remain available to the public in the courtroom, an audio feed will be made available to public.

### **COVID -19 SAFETY PROTOCOL**

In order to provide a safe environment for all parties and other trial participants, the Court has approved the following COVID-19 safety protocol.

#### **1. Safety Procedures Applicable to All Individuals Who Enter the Courthouse**

All individuals who enter the Courthouse shall be expected to adhere to CDC guidelines for Covid-19.

##### **(A) Pre-Entry Health Assessments**

###### **a. Temperature Checks**

Consistent with existing protocols, the Courthouse personnel will perform a temperature check on all individuals entering the Courthouse through no-contact thermal imaging. Any person exhibiting a temperature greater than 100.4<sup>0</sup> will not allowed in the building.

###### **b. COVID-19 Safety Questionnaire**

Self-assessment health signage is already posted conspicuously around the Courthouse. Such signs direct any person who fails the self-assessment not to enter the

building. In addition, any individual who answers “yes” to any of the following questions shall inform the Court’s personnel before entering the Courthouse:

- In the last three weeks, have you been diagnosed with COVID-19?
- Are you currently experiencing new or worsening signs of any of the following symptoms not otherwise attributable to a condition other than COVID-19 (such as pregnancy, dehydration, rigorous exercise, etc.): difficulty breathing or shortness of breath; loss of the sense of taste or smell; gastrointestinal discomfort including vomiting or diarrhea; fever; cough; fatigue; headache; or muscle or body aches; or runny nose?
- In the last two weeks, have you been in close contact with someone who was diagnosed with COVID-19 or whom you believe likely has COVID-19? You have been in close contact if you have (a) been within 6 feet of someone who has COVID-19 for a combined total of 15 minutes or more over a 24-hour period *or* (b) provided care at home to someone who is sick with COVID-19 *or* (c) had direct physical contact (e.g., hugged or kissed) with someone who has COVID-19 *or* (d) shared eating or drinking utensils with someone who has COVID-19 *or* (e) been sneezed on or coughed on by someone who has COVID-19.

#### **(B) Social Distancing**

All individuals who enter the Courthouse are instructed to adhere to social distancing requirements, including keeping an at least 6-feet of distance from other participants and limiting Courthouse elevator occupancy to a maximum of 2 riders at a time.

### **2. Additional Safety Procedures**

#### **(A) Procedures for Jury Assembly Room and Jury Deliberation Room**

Additional precautions are to be taken in rooms used by the jury during assembly, breaks, and deliberations, on days when such rooms are occupied:

- Availability of hand sanitizer containing at least 60% alcohol by volume; and
- Daily surface cleanings with appropriate disinfectants with activity against COVID-19.

#### **(B) Procedures In the Courtroom**

Additional precautions are to be taken in the Courtroom each day of trial:

- Use of plexi-glass or other similar protective barrier around the witness stand, as already erected by the Court and used in prior trials;

- Appropriate distancing between counsel's tables, the lectern, the jury box, and the Court;
- Availability of hand sanitizer containing at least 60% alcohol by volume;
- Disinfectant cleaning of the witness box and witness microphone at the conclusion of each witness's testimony performed by party-affiliated staff with appropriate disinfectants with activity against COVID-19;
- Daily surface cleanings; and
- Limit on the number of individuals inside the Courtroom at any particular time as follows:
  - Maximum of 12 party-affiliated trial participants per party including corporate representatives and technical personnel, but not including any witness presently testifying; and
  - Maximum of 7 jurors during trial after jury selection, and a maximum of 20 potential jurors or jurors during voir dire and instructions.

### **3. Live Feed of Trial Proceedings**

#### **(A) Video Access for Party-Affiliated Individuals**

In order to minimize the number of party-affiliated individuals that will be in the Courthouse on any given day and to accommodate any witness that will testify remotely by video but would otherwise be permitted to observe trial, a live video feed of the trial proceedings will be arranged. The parties will work with the Court IT staff to arrange such a stream using the Court's Zoom platform, and individuals or groups of individuals that access the stream will be required to login using a designated link. This live feed may be accessed by the following party-affiliated individuals outside of the Courthouse:

- The parties' outside counsel, staff, and consultants;
- Party in-house counsel disclosed under the Protective Order;
- Witnesses on either party's witness list to the extent permitted under the Protective Order and Pre-trial Order. A fact witness (other than a designated corporate representative) may not observe the testimony of other witnesses until after that witness has completed his/her testimony and been excused by the Court. Expert witnesses and corporate representatives may observe the testimony of other witnesses before they testify—although corporate representatives may be precluded from observing certain sealed testimony because of confidentiality reasons.

#### **(B) Audio Access for the Public**

The public is permitted to listen to the trial proceedings by telephone. Any individuals who are interested in observing the trial by telephone shall contact the Court's Courtroom Deputy for access information. The public is not permitted to observe the trial via video streaming. Recording of the proceedings in any way is not permitted.

### **(C) Remote Participants**

Virtual trial participants and observers should silence electronic devices other than the devices necessary to their remote participation, close unnecessary computer programs or applications (such as email or calendar notifications), and take steps to remove or minimize anything in their remote workspace that might distract from the integrity of the proceedings. Participants and observers who will not be testifying or presenting matters during the proceedings shall mute their microphones and deactivate their cameras. Participants and observers using multiple devices in a single workspace to access the trial should avoid audio feedback issues by using the microphone and speakers on only one device at a time, or by using headphones.

The Court asks all remote participants to do their best to maintain professionalism in order to conduct a fair and efficient trial. Anyone appearing virtually shall dress in the same manner as they would if they physically appeared in the courtroom. If party members, member of the press, or members of the public become disruptive, the Court may further restrict who is able to view the trial. Remote trial participants and observers should conduct themselves in the same way they would if they were physically present in the courtroom.

#### **4. Bench Conferences**

There will not be bench conferences in the presence of the jury during trial.

#### **5. Exhibits**

The use of electronic exhibits for any exhibit displayed and/or given to the jury unless providing or displaying an exhibit electronically is impractical or restricted under the protective order. For the sake of clarity, any witness, counsel, staff, and the Court may each have his or her own set of physical exhibits. However, physical exhibits will not be passed to the jury absent approval by the Court.

#### **6. Lunch for Jurors**

At the Court's expense, lunch be brought in for all jurors daily in individual boxes or containers with disposable utensils to avoid unnecessary exposure to those outside the Courthouse during lunchtime. Jurors be instructed to increase social distancing beyond 6 feet during eating periods.

#### **7. Costs**

Costs for the above that are not borne by the Court will be borne by the parties in equal amounts.

**IT IS SO ORDERED.**

SIGNED this 1st day of June, 2021.

A handwritten signature in black ink, reading "Alan D Albright". The signature is written in a cursive, flowing style. The first name "Alan" is followed by a middle initial "D" and the last name "Albright". The signature is positioned above a horizontal line.

ALAN D ALBRIGHT  
UNITED STATES DISTRICT JUDGE